

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

RANDY GREENSLADE
Howard County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2011-AFO- 05

TO: Randy Greenslade
3097 County Road A 14
Cresco, Iowa 52136

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Randy Greenslade for the purpose of resolving issues regarding Mr. Greenslade's failure to have proper manure applicator certification. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Rick Martens, Field Office 1
Iowa Department of Natural Resources
909 West Fayette, Suite 4
Manchester, Iowa 52057
Phone: 319/927-2640

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Height, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. On October 18, 2010, DNR Field Office 1 received a complaint stating that manure from the Iowa Corn Beef, LLC facility was being improperly field applied and was posing a threat to a tributary of the Upper Iowa River. The complainant stated that the manure was being applied to a field owned by Randy Greenslade.

2. On October 19, 2010, Rick Martens, DNR Field Office 1 environmental specialist, conducted a complaint investigation. Mr. Martens visited the Iowa Corn Beef, LLC animal feeding operation located at 3846 318th Avenue, Cresco, Iowa. The operation has a cattle feedlot and confinement cattle. During the investigation, Mr. Martens spoke to Mr. Greenslade. Mr. Greenslade has a farming operation adjacent to the feedlot. Mr. Greenslade stated that he had recently applied manure from the confinement facility to his field in the same section as the facility. Mr. Martens and Mr. Greenslade visited the application field. It was located in the southeast corner of Section 10, Fremont Township, Winneshiek County. Mr. Greenslade explained that he preferred to wait 48 hours before incorporating the manure but that he would begin to immediately incorporate the manure. Mr. Martens explained the separation and incorporation regulations to Mr. Greenslade. Mr. Greenslade recalled completing the manure applicator certification course but he could not provide the date of the training.

3. During the investigation, Mr. Martens also spoke with Matt Nelson, owner of Iowa Corn Beef, LLC. Mr. Nelson stated that all the manure from the facility was given to Mr. Greenslade in return for the removal and application of the manure. Prior to leaving the area, Mr. Martens inspected the nearby tributaries and did not find any water quality violations.

4. Following the inspection, Mr. Martens reviewed the DNR's files to verify Mr. Greenslade's manure applicator certification. The DNR records indicated that Mr. Greenslade's manure applicator certification expired on December 31, 2009.

5. On November 12, 2010, DNR issued a Notice of Violation letter to Randy Greenslade for the manure applicator certification violation discovered as a result of the October 19, 2010 inspection. The letter and inspection report required that Mr. Greenslade become properly certified prior to applying manure. The letter and inspection report also indicated the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation

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of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 459.315(2) and 567 IAC 65.19(1) state that a commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. During Mr. Martens' investigation, it was determined that Mr. Greenslade was not properly certified to be land applying confinement manure from the Iowa Corn Beef, LLC facility. Mr. Greenslade is considered a confinement site manure applicator. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Randy Greenslade agrees to do the following:

1. Randy Greenslade shall not handle, transport, or apply manure until he is properly certified; and
2. Randy Greenslade shall pay an administrative penalty of \$3,000.00, within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit

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should be made where clear data are not available." Randy Greenslade saved time and money by not being properly certified to apply manure. He avoided the expenses of the training and certification fees. Additionally, he received the manure in return for the removal and application of the manure. Since he was not properly certified he should not have been applying the manure; therefore he avoided the costs associated with either purchasing fertilizer or hiring a certified applicator to remove and apply the manure for him. An estimated economic benefit of \$500.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The manure applicator certification program is an important component of the animal feeding operation regulations. The program ensures that manure is transported and applied properly. Since the manure was not properly incorporated, it posed a potential water quality threat to the nearby tributary. Mr. Greenslade's failure to be properly certified threatens the integrity of the water quality program. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. Greenslade has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. The manure applicator certification program and its requirements have been widely publicized throughout the animal feeding industry. Mr. Greenslade was previously certified and should have been aware that he needed to renew his certification. Therefore, \$1,000.00 is assessed for this factor.

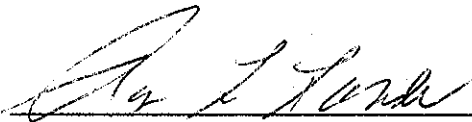
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Randy Greenslade. For that reason Randy Greenslade waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 14th day of
February, 2011.



Randy Greenslade

Dated this 9 day of
Feb., 2011.

Kelli Book, Rick Martens - Field Office 1, EPA, VIII.D.4